

New Hampshire Supreme Court

October 25, 2007

Oral Argument Case Summaries

CASE # 1

State of New Hampshire v. Sean D. Brown, No. 2006-0333

Attorney Theodore Lothstein, Appellate Defender Program, for the appellant, Sean Brown
Senior Assistant Attorney General Jeffrey S. Cahill for the appellee, State of New Hampshire

QUESTION PRESENTED ON APPEAL:

Did the court make a mistake when it decided that six drug charges against a Nashua man, all involving separate transactions set up by undercover police, would all be tried at once before the same jury?

QUESTIONS FOR STUDENTS TO CONSIDER:

Why is it important to the defense that these charges be “severed?”
Why would it be important to the prosecution to have these charges all tried at once?

The courts have said that the standard for deciding when multiple offenses can be joined into one trial will be if the offenses are “related” and are “based upon the same conduct, upon a single episode or upon a common plan.” Do you think the charges in this cases were “related?”

Offenses are part of a “common plan” when there is a “true plan in the defendant’s mind which includes the charged crimes as stages in the plan’s execution.” Was there a “common plan” in this case?

Is it fair for the prosecution to introduce evidence of “prior bad acts?”

FACTS OF THE CASE:

A grand jury indicted Sean Brown on four counts of selling heroin and later for two counts of conspiracy. Each of the four heroin sales took place on different days, at the same location, and involved the same undercover informant who was working for the Nashua police. The two conspiracy charges took place on different days, but at the same location, with a third party who was a “runner” for the defendant. The government contends the defendant followed the same “strict routine for selling heroin” on each occasion.

When the defendant was arrested, the police found plastic bags, a heat sealer and a scale at his house, all commonly used in drug sales. The defendant agreed to an interview with police after his arrest and, when questioned about his illicit drug business, he said “What I am doing is wrong, but I’m making money.”

At trial, the judge joined all six charges into one trial, saying they were all “based on a common enterprise, the business of selling drugs.” After a trial, and before the jury began its deliberations, the court dismissed the two conspiracy charges, finding that the prosecution failed to establish that the two heroin sales constituted a conspiracy.

The jury convicted Brown of four counts of selling heroin. The judge sentenced Brown to serve a total of three and a half to seven years in prison. The government took the case to the court system’s Sentence Review Division asking that Brown serve a longer prison term than the trial judge imposed. The division sentenced Brown to five to 14 years in jail.

LEGAL ISSUES

In his appeal to the Supreme Court, the defendant asks that his conviction be reversed. The defense contends that the judge made a mistake in consolidating the charges into one trial because the offenses were not shown to be “mutually dependent and were not part of a common plan” as the law requires. New Hampshire law says that the definition of a “common plan” means a “true plan in the defendant’s mind which includes the charged crimes as stages in the plan’s execution.”

They argue that the “plan” in this case “amounted to nothing more than the sum of its parts.”

The defense also claims that the defendant was unfairly prejudiced by consolidating the conspiracy charges with the drug sale charges even though the judge told the jury to disregard that evidence in reaching its verdict. The defense contends the conspiracy evidence was prejudicial to the defendant and, as the Supreme Court said in another case, “this is one of those extraordinary cases where the trial court cannot unring a bell once it has been rung.”

The prosecution contends that the six heroin sales were necessary parts of the defendant’s common plan to profit from selling heroin. The prosecution argues that none of the heroin sales, standing alone, would have allowed the defendant to “to achieve his goal of profiting from selling the drug.” Even if the judge made a mistake, the prosecution contends it was harmless because the same evidence that was used at the consolidated trial could have been used if the defendant had been tried separately on each offense.

This summary was prepared by the Judicial Branch Communications Office, October 1, 2007.

